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BOARD MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CALEPA BUILDING
1001 I STREET
2ND FLOOR
BYRON SHER AUDITORIUM
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 17, 2006
9:30 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Mr. Jeffrey Danzinger

Ms. Rosalie Mul

Ms. Cheryl Peace

Ms. Pat Wiggins

STAFF

Mr. Mark Leary, Executive Director

Mr. Elliot Block, Staff Counsel

Mr. Mark de Bie, Branch Manager, Permitting Inspection
Branch

Ms. Theresa Bober, Staff

Ms. Mindy Fox, Supervisor, Training, Outreach & Special
Assistance Section

Ms. Kristen Garner, Executive Assistant

Ms. Elizabeth Huber, Legislative Director

Mr. Jim Lee, Deputy Director, Special Waste Division

Mr. Howard Levenson, Deputy Director

ALSO PRESENT

Mr. George Larson, Waste Management, Inc.

Mr. Sean Torres, Irell & Manella, LLP

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: I guess we're ready. I
3 apologize. Let's see. Call this meeting to order.

4 Kristen, do you want to call the roll?

5 EXECUTIVE ASSISTANT GARNER: Danzinger?

6 BOARD MEMBER DANZINGER: Here.

7 EXECUTIVE ASSISTANT GARNER: Mulé?

8 BOARD MEMBER MULÉ: Here.

9 EXECUTIVE ASSISTANT GARNER: Peace?

10 BOARD MEMBER PEACE: Here.

11 EXECUTIVE ASSISTANT GARNER: Petersen?

12 Wiggins?

13 COMMITTEE MEMBER WIGGINS: Here.

14 EXECUTIVE ASSISTANT GARNER: Brown?

15 CHAIRPERSON BROWN: Here.

16 And Gary, if you're listening in, I'm not sure if
17 he is, but Gary Petersen is not feeling well and was not
18 able to fly up to Sacramento this week. So we wish him a
19 speedy recovery. And if you're listening in, Gary, call
20 us if you need anything.

21 Remind people to please turn your cell phones to
22 the vibrate mode and also pagers in off if you intend to
23 speak at the microphone.

24 There are speaker slips located on the table in
25 the back of the room.

1 The Board will be going into closed session at
2 the conclusion of our regular Board business.

3 And I'd like to ask everybody to stand, and this
4 time I would invite the audience to start the Pledge of
5 Allegiance.

6 (Thereupon the Pledge of Allegiance was
7 recited in unison.)

8 CHAIRPERSON BROWN: Thank you all very much.

9 Does anybody have any ex partes to report?

10 BOARD MEMBER MULÉ: Up to date.

11 COMMITTEE MEMBER WIGGINS: Up to date.

12 BOARD MEMBER DANZINGER: Up to date.

13 BOARD MEMBER PEACE: Up to date.

14 CHAIRPERSON BROWN: Great. Everybody is up to
15 date.

16 And we will move now to the Executive Director's
17 report.

18 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
19 Chair. Good morning. Good morning, Members.

20 This morning, I have kind of a substantive
21 lengthy Executive Director's report, a couple of key
22 items, a key announcement. And then Elizabeth Huber will
23 be giving us a leg. update as part of my report. So
24 without further ado, I'll jump right into it.

25 As you know, Members, Agenda 16 was pulled from

1 today's agenda. I'd like to take a few minutes to provide
2 the rational for this decision, explain the current
3 situation with respect to the American Waste Industry's
4 permit, and summarize direction I've given to staff on the
5 next steps I view as critical for ensuring the performance
6 of the City of Los Angeles' LEA and LEAs in general.

7 The purpose of the item was to unable the Board
8 to consider what action, if any, to take due to the LEA's
9 failure to issue a Cease and Desist Order to American
10 Waste Industries for operating a construction, demolition,
11 and inert debris processing facility without a solid waste
12 facility permit, in violation of Public Resource Code
13 Section 44002. Title 14 of the Regs Section 18350 lays
14 out the process by which the Board can take action if the
15 LEA has failed to take the appropriate enforcement action.

16 Board staff determined earlier this summer the
17 facts and applicable law justified that the LEA take such
18 an enforcement action. As part of the 18350 process,
19 staff sent the LEA a formal notice on September 8th, 2006,
20 that would ask the Board to consider taking an enforcement
21 action upon a public hearing set for today. At the time
22 the item was written, the LEA hadn't taken appropriate
23 enforcement by issuing a Cease and Desist Order to
24 American Waste Industry demanding it cease operating a
25 solid waste facilities permit without the necessary

1 permit.

2 To that end, the item was placed on this month's
3 agenda for consideration. If the Board had heard the item
4 and found the LEA failed to take the appropriate
5 enforcement action, one action authorized by statute in
6 regs would have been for the Board to take direct
7 enforcement action against American Waste Industries for
8 operating without the required solid waste facilities
9 permit.

10 Since the item was written, the LEA has taken the
11 required action. And so there's no longer any need for
12 the Board's hearing on whether the Board itself should
13 take the enforcement action.

14 There is, however, a second aspect of this
15 situation that I want to bring to your attention.
16 American Waste Industries has filed an application for a
17 solid waste facilities permit with the LEA, yet the LEA
18 has not completed processing the application and has not
19 sent a new proposed permit to the Board for its
20 concurrence or objection. This delay commenced when the
21 LEA withdrew the proposed permit in May of this year with
22 the consent of the operator and to reconsider issues
23 regarding compliance with CEQA.

24 This has put the operator in the position of
25 receiving a Cease and Desist Order for operating a

1 facility without a permit, even though at the same time
2 the LEA has delayed responding to the permit application
3 that the operator has submitted.

4 The operator has raised concerns about this with
5 our staff. It's apparent to me that the LEA's failure to
6 process American Waste Industry application for a permit
7 in a timely manner also merits our attention.

8 The good news is that our staff has just
9 completed an evaluation of the LEA where several findings
10 were made about the LEA's performance, including the
11 situation. These findings will be addressed as part of
12 the required work plan that the LEA must submit pursuant
13 to this evaluation. The work plan is due from the LEA
14 this month, and I have asked staff to provide an expedited
15 review of it so that the implementation can begin as soon
16 as possible, as well as to let me know of any shortfalls
17 in the LEA's response.

18 Even under the best of circumstances, however,
19 implementing the work plan will take time. As a result,
20 over the past few weeks, staff has joined with the
21 operator in trying to establish a conference call with
22 American Waste Industries and the LEA to learn why the
23 permit application has been stalled and to determine what
24 can be done to move the permit through the process.

25 I've asked staff to continue working with the LEA

1 on the situation and to report back to me within the next
2 few weeks. If warranted, I may direct staff to take
3 additional measures based on the result of the staff's
4 investigations and recommendations, potentially including
5 but not limited to processes outlined in the applicable
6 regulations. If we cannot resolve this with the LEA
7 expeditiously, this could ultimately result in bringing an
8 item to the Board that considers taking action respecting
9 the LEA's delay in processing American Waste Industry's
10 permit application.

11 Lastly, we've communicated this situation to the
12 operator and his representatives and indicated that even
13 though Agenda Item 16 has been withdrawn from today's
14 agenda, they're welcome to speak to the Board briefly
15 under the public comment portion of the agenda upcoming.
16 But I've cautioned them that the Board will not be able to
17 take further action on the matter at today's hearing.

18 So substantive item number two. On another note,
19 I'd like to give you an update on our environmental
20 justice efforts. In October 2004, Cal/EPA released its
21 Environmental Justice Action Plan, which is a specific set
22 of projects and actions intended to help assess the
23 different environmental scenarios, identifying challenges
24 and opportunities, explore practical application of
25 strategies, and develop recommendations to address

1 environmental justice issues. These include: Developing
2 guidance on precautionary approaches; developing guidance
3 on cumulative impacts; improving tools for public
4 participation and community capacity building; and ensure
5 an EJ consideration within the Governor's Environmental
6 Action Plan.

7 The environmental justice inter-agency strategy
8 and the Environmental Action Plan formed the two pathway
9 approach that Cal/EPA is taking to implement environmental
10 justice. The short-term activities of the Action Plan
11 will feed back into the long-term strategic planning
12 process and vice versa. These efforts will combine into
13 an integrated EJ mechanism for Cal/EPA.

14 Waste Board staff has specifically been assigned
15 to develop guidance on Cal/EPA's precautionary approach
16 implementation efforts and focus on precaution related
17 activities for the other pilot projects identified in the
18 Action Plan. Specifically, the EJ Action Plan directs
19 Waste Board to:

20 1. Develop a common objective working definition
21 for precautionary approaches.

22 2. Inventory where and how precautionary
23 approaches are used in the CalEPA's Environmental Programs
24 and any obstacles to limit precautionary actions.

25 3. Evaluate whether additional precaution may

1 be warranted in Cal/EPA's environmental programs to
2 address or prevent environmental justice problems.

3 4. Identify reasonable cost effective approach
4 that could be used to prevent or minimize adverse
5 environmental impacts.

6 5 And lastly, develop guidance on
7 precautionary approaches and recommend implementation
8 options including proposals for policy, regulatory, and
9 statutory changes.

10 On the positive side, the working definition has
11 been developed and the inventory has been completed. The
12 next steps include releasing the inventory to the public
13 for review and comment; establish an external working
14 group; and conducting workshops on precaution and how
15 Cal/EPA can best provide guidance to BDOs in this effort.

16 In addition, Cal/EPA is preparing its triennial
17 report to the Legislature on environmental justice. This
18 report will include a section from each BDO that covers
19 environmental justice related activities and
20 accomplishments over the last two years, a discussion of
21 challenges faced in implementing environmental justice,
22 and the environmental justice related objectives for the
23 next one to five years.

24 We are preparing a draft report for submittal to
25 Cal/EPA covering these areas for the Board. This report

1 will propose a few objectives focusing on community
2 involvement and public participation for Board approval in
3 November at the November Board meeting. Upon Board
4 approval, these objectives will be included in the report
5 to the Legislature.

6 Now for the fun stuff. I'd like to take this
7 opportunity, Madam Chair and Board members, to announce
8 the appointment of the selection of our Assistant Director
9 the Office of Education and the Environment. After a very
10 difficult selection process, because we had a very
11 talented candidate pool, we have arrived at the selection
12 of Ms. Mindy Fox to lead the Office of Education and the
13 Environment.

14 And with that, Madam Chair, I'd like to welcome
15 Mindy to the position, express my support, and request
16 your support and all of staff support for Mindy in this
17 position and give her a warm round of applause.

18 (Applause)

19 EXECUTIVE DIRECTOR LEARY: Mindy, as you know,
20 comes to us not from very far away, all the way in P&E.
21 She's been with us for a good 13 years here at the Waste
22 Board. Done a number of things, most recently working in
23 the LEA's Support Services Branch, but has been involved
24 with Household Hazardous Waste Program, Oil Programs,
25 Business Assistance, touched a little bit of all of our

1 programs.

2 And prior to that, I had the pleasure of working
3 with Mindy back at our colleagues, Department of Toxic
4 Substances Control, and Mindy initiated their whole public
5 education program at DTSC back in the early '90s. So
6 Mindy has a strong education background, a strong
7 management perspective, and of course a very strong
8 environmental ethic. So I think she'll do a great job in
9 this position.

10 So with that, finally, I'll turn it over to our
11 Leg. Director Elizabeth Huber for a summation of the
12 legislative session now that the Governor has completed
13 his actions. And after hogging the whole agenda, I'm sure
14 we'll be ready to move into our items.

15 LEGISLATIVE DIRECTOR HUBER: Good morning. I
16 think you have your -- can you hear me now? I think you
17 have your presentation in front of you. As we said at
18 September's Board meeting, we'd come back.

19 What we're going to highlight is out of the 20
20 priority one bills, we had 15 that were signed by the
21 Governor, five vetoed. And we wanted to share what our
22 office will be doing for the last three months of the
23 year.

24 If you turn to signed legislation, I think what
25 you will see is a consistency in that the bills the

1 Governor signed promote recycling in the state and
2 increased enforcement assistance to local governments and
3 the Board. The other area of legislation that he signed
4 is where we play a collaborative or supportive role with
5 green buildings, climate change, and again local
6 assistance.

7 You will notice that we do have one report that
8 will be due to the Legislature January 2008, and that's AB
9 2298 on landfills.

10 What we tried to capture in the report is if
11 there was a signing method by the Governor, specific
12 requirements to the Board, any fiscal impact, and then the
13 actual affected PRC Code sections. Then you'll see here
14 we are effected in more than just the Public Resource Code
15 sections.

16 Is there any questions?

17 CHAIRPERSON BROWN: I don't think so. Does
18 anybody have any questions?

19 BOARD MEMBER MULÉ: Madam Chair, I just want to
20 thank Elizabeth and staff on a job well done. Elizabeth,
21 I know you came in here at the tail end of this session
22 and really did an incredible job of pulling all this
23 together. I really do appreciate this report. It's
24 comprehensive and very thorough and look forward to
25 working with you and your staff in future leg. sessions.

1 So thank you very much.

2 LEGISLATIVE DIRECTOR HUBER: I wanted to go on to
3 section two then. Thank you, Member Mulé.

4 Vetoed legislation, and there's two components
5 that you'll see here in why the Governor made the decision
6 to veto. And those key messages were that where local
7 jurisdictions have the requirement and responsibility to
8 develop ordinances and policies, he wants that to remain
9 there. And that we should continue to provide the tools
10 and expertise and business support to those local
11 jurisdictions which is indicated in the bills that he
12 signed.

13 So that's what you're going to see in the five
14 pieces of legislation that he did veto. And we're
15 fortunate. I believe four of the five there actually is a
16 veto message along with them that gives our office
17 definitely some clear guidance as to how we should be
18 moving forward.

19 Any questions on any of the vetoed bills? I
20 think there were some of the bills that were signed such
21 as the report will also give us time to do some studies
22 that probably some of the bills here that were vetoed were
23 a little bit premature also in one of his messages to give
24 us the time to submit that report next year. So I think
25 staff appreciates that.

1 CHAIRPERSON BROWN: Great. Thank you, Elizabeth.

2 LEGISLATIVE DIRECTOR HUBER: And then finally
3 just to give you a little bit of what we're going to be
4 doing in the next three months until the end of the year.
5 Internally, we will be doing some legislative training.
6 We have our first on October 24th with our legislative
7 liaisons from the divisions, as well as the advisors are
8 welcome to attend.

9 And then the other requirement if you're unaware
10 that the Legislative Office is responsible for, we
11 actually put an end-of-session summary booklet together.
12 And we actually work with Committee staff, because the
13 Legislature also puts their own summary for each
14 Committee. So this was sampled.

15 And then we're also responsible and we've been
16 working since September on the statute book. In every
17 session, we prepare the new statute book for the next
18 session. And so there'll be a January 2007 updated one.
19 We also once we finalize, we work with Legal to make sure
20 we're accurate and then with publications within the
21 Public Affairs Office. So I wanted to make you aware
22 we're working on that.

23 And then externally the other component of our
24 office responsibilities, there's 36 of the 43 open seats
25 in the Legislature will be new members to State service in

1 the Assembly and Senate. So we've begun working with
2 division staff on preparing informational meeting packets
3 to showcase and highlight the work that the Board does
4 within their legislative districts. So we're going to be
5 putting those together as well.

6 And like Member Mulé, I definitely want to thank
7 my staff, Keir, Pat, Ryan, and Anthony. I'm in my fifth
8 month now, and they have supported me and engaged in some
9 of the new processes and protocols that we've established
10 in the Office of Legislation External Affairs. And
11 they've embraced it openly and no complaints. And I just
12 want to thank them all publicly for their work and their
13 support.

14 CHAIRPERSON BROWN: Great. Good job, Elizabeth.
15 Thank you very much for this report. And if any members
16 after spending some time with it, I'm sure Elizabeth would
17 be happy to meet with you and go through some of the
18 signed and vetoed legislation and answer any questions.
19 Thank you very much.

20 EXECUTIVE DIRECTOR LEARY: I need one more moment
21 please in introducing Mindy. I want to express --

22 CHAIRPERSON BROWN: I will yield you a minute.

23 EXECUTIVE DIRECTOR LEARY: Thank you. In
24 introducing Mindy, I wanted to express my appreciation to
25 Susan Sakakihara who has been Acting Lead of the Office of

1 Education and the Environment for longer than I think she
2 or I would care to admit. But she came to the office as a
3 retired annuitant just looking to help out and fill in
4 because she believed in the subject and was passionate
5 about it. And because of some transitions that occurred,
6 low and behold she's running the show. And she's done a
7 great job.

8 And I think Andrea Lewis at Cal/EPA will join me
9 in expressing their appreciation for Susan's work in the
10 office. And I know she'll be around to help Mindy out for
11 a little while longer, and she's expressed an interest in
12 staying on with the Board in the retired annuitant
13 capacity to help out wherever we may need it. And I
14 greatly appreciate that offer. So --

15 CHAIRPERSON BROWN: As long as it doesn't
16 transition to a permanent position again, you mean.

17 EXECUTIVE DIRECTOR LEARY: I don't think she's
18 interested in becoming permanent. But she's really
19 retired, although you can hardly believe it.

20 CHAIRPERSON BROWN: Thank you, Mark. And Susan,
21 I think the rest of the Board also would echo that
22 appreciation. Thank you very much.

23 Probably the hardest part of any new program is
24 laying the foundation. And you have contributed
25 significantly to laying a very firm foundation for the EEI

1 program.

2 And welcome, Mindy. We're very excited about
3 what lies ahead. And obviously, we'll be talking about
4 EEI later in the agenda, just the best of luck and we're
5 counting on you to continue with the great work that Susan
6 has helped to start on behalf of the Board.

7 Does that conclude the Executive Director's
8 report, since I just wrestled that away from you?

9 DEPUTY DIRECTOR LEE: No. I interrupted you.
10 That does conclude my report, Madam Chair.

11 CHAIRPERSON BROWN: Thank you.

12 And we will move to our public comment period.
13 As Mark alluded to in his message, we do have one member
14 of our audience interested in speaking in public comment
15 period, and that's Sean Torres from Irell and Manella.

16 MR. TORRES: Good morning. My name is Sean
17 Torres with Irell & Manella. We represent American Waste
18 Industries, or AWI for short. We were the first item that
19 Mark discussed in his report to the Board this morning.

20 The purpose of my comments are to address and
21 emphasize to the Board the LEA's failure to timely process
22 our client's permit application.

23 I'd like to give to the Board a letter we wrote
24 to Dr. Levenson last week and a response from Dr. Levenson
25 that we received. I wonder if it has been passed out.

1 Okay. Great.

2 So my letter basically summarizes what I will say
3 here today, so I'll keep my comments brief. And it lays
4 out our arguments with respect to the LEA.

5 But I flew up from L.A. because I wanted to
6 emphasize to the Board the urgency of this matter. AWI
7 has operated as a properly permitted facility since
8 January 1999. In early 2003, when the newly enacted
9 regulations required a facility of our type to have a
10 solid waste facility permit, we began the application
11 process. This is back in February 2003. It is now
12 October 2006, and we still do not have our permit. Even
13 though our application is complete, the M&D document is
14 correct and accurate, it has still not been circulated.

15 We believe this is unacceptable, and we are
16 respectfully requesting that the Board immediately issue a
17 notice under Section 18087 to the LEA to say that the
18 Board will hear the LEA's permitting deficiencies at their
19 nearest Board meeting. I understand that there's a 30-day
20 notice period in order to hear an issue. And so if the
21 Board were to please start that notice period as soon as
22 possible so that we can resolve this situation as soon as
23 possible the public Board meeting, that will be in our
24 client's best interest.

25 Just to give you some background, so AWI was

1 permitted by the City of L.A. since January 1999. It
2 began its application in February 2003 for a solid waste
3 facilities permit. In 2004, AWI was obliged to amend its
4 permit application to implement a stipulated judgement
5 with the City Attorney's Office of L.A. to make building
6 improvements that would further reduce environmental
7 impacts.

8 Subsequent to this, the LEA through the City of
9 L.A. Planning Department prepared and circulated an M&D.
10 However, the M&D was inaccurate, and it mischaracterized
11 the project. The two biggest inaccuracies with this M&D
12 was it said AWI was proposing to increase the tons per day
13 that it was processing. This is not true. AWI is not
14 proposing to increase the tons per day that it was
15 permitted to process under its CUP with the City. It's
16 the exact same. There is no expansion.

17 Second, the M&D failed to discuss the stipulated
18 judgment that we entered with the City itself to further
19 make building improvements that would reduce environmental
20 impacts.

21 So this M&D was circulated, and it
22 mischaracterized the project. And it rallied public
23 support against AWI, because it erroneously said we're
24 going to expand our processing and also did not say how
25 we're going to reduce our environmental impacts through

1 the stipulated judgment.

2 We notified the LEA of this inaccurate M&D back
3 in April and May of this year, and we provided a corrected
4 M&D for them to circulate. This is back in May. The LEA
5 principally has no dispute with us as to the correctness
6 of the M&D we provided to them. Yet, since May they have
7 not circulated this M&D. They have not circulated the M&D
8 to correct the previous M&D that had all these flaws and
9 that rallied public support against us.

10 Now we are in a situation where we have been
11 issued a Cease and Desist Order, and now the clock is
12 ticking. Based on our calculations, even if all of the
13 time periods are taken to their maximum extent possible,
14 by the end of January, the appeal process will run out.
15 The stay will finish, and our facility will have to close
16 down, even though our application is complete and it is
17 frankly a no-brainer that our permit should issue.

18 So this represents a breakdown in the permitting
19 process, and it requires the Board's immediate attention
20 as to why the LEA has failed to issue our permit despite
21 its accuracy and it being complete and to correct our
22 situation.

23 I'd like to note two important points to the
24 Board. AWI has heard rumors that there have been
25 behind-the-scenes talks with a local union that has been

1 negotiating with AWI. We have heard this union has gone
2 behind the scenes to stall our permit, and that is one of
3 the reasons that we can sort of fathom why we have not
4 been issued our permit yet. Otherwise, it just does not
5 make sense. We are not in disagreement principally on the
6 M&D, but yet they have still have not circulated it since
7 May.

8 The other important point I'd like to note to the
9 Board is that AWI is in a pending transaction to sell this
10 facility. If this delay continues and it does not receive
11 its permit, this transaction will be threatened. And
12 there will be real potential damages that may be
13 occasioned to AWI due to the LEA's failure to properly
14 process our permit.

15 I understand Mark's, the Executive Director's,
16 comment that the Board cannot take action now. But we
17 would strongly encourage you to send out a notice pursuant
18 to 18087 to the LEA to start the 30-day notice period to
19 put them on notice that the Board considers this
20 unacceptable, that their failure to properly process,
21 complete accurate permits is a problem, and that the Board
22 calendar this for the nearest available public meeting,
23 30 days from that notice.

24 Thank you. Do you have any questions?

25 CHAIRPERSON BROWN: Thank you. No. Not at this

1 time. Thank you.

2 Howard, do you want to tell us what course of
3 action you're taking at this time?

4 DEPUTY DIRECTOR LEVENSON: Sure, Madam Chair.
5 Howard Levenson, Deputy Director for Permitting and
6 Enforcement.

7 And we have been in quite a bit of communication
8 with both the LEA and the operator on this issue. There
9 are -- I have to be careful in terms of what I say today.
10 There are a lot of issues on the table including the due
11 process that we afford the LEA in terms of its evaluation
12 and work plan, the considerations about the environmental
13 documents and their adequacy themselves.

14 As you will recall when this item came to the
15 Permitting and Enforcement Committee in May, at that point
16 staff did determine that the mitigated negative
17 declaration was adequate, but there were questions that
18 were raised at that time.

19 So I'm aware the LEA is undergoing discussions
20 internally with the city attorney about the form and
21 process for the environmental document. We are in
22 communication with them and will be over the next few days
23 and couple of weeks to try to bring this to some
24 resolution so there is some determination what the
25 environmental document will be and what the time frame

1 will be.

2 Depending how all that goes, as Mark indicated,
3 we will be looking at the work plan that the LEA submits
4 to us and how they're going to address these issues. And
5 more specifically on this situation, if there are courses
6 of action that we think would warrant Board consideration,
7 we will discuss that with the Executive Director. And
8 that could include, as Mark indicated, initiating some of
9 the processes that Mr. Torres spoke to. But at this
10 point, we're not at that decision right now.

11 CHAIRPERSON BROWN: Okay. Thank you.

12 MR. TORRES: May I make one quick point real
13 quickly?

14 CHAIRPERSON BROWN: Okay. 30 seconds.

15 MR. TORRES: Thank you.

16 I appreciate Mr. Levenson's continued diligence
17 in this matter.

18 One issue I wanted to point out is for work plan,
19 we do not view that as an adequate remedy because --

20 CHAIRPERSON BROWN: That is the Board's
21 procedure. So that is required as part of procedure. It
22 doesn't really matter what you view as adequate. That is
23 the procedure the Board must follow.

24 MR. TORRES: I understand. Thank you.

25 CHAIRPERSON BROWN: I appreciate your comments.

1 But the work plan must proceed and we have to have due
2 process. Thank you. I appreciate the comments.

3 And now we will move to the consent agenda.

4 Items 1, 2, 3, 4, 5, 7 Revised, 8, 9, 10, 11, 14 Revised,
5 17, 18, 20 Revised, 22 Revised are recommended and on the
6 consent agenda.

7 Any Board member interested in pulling any items
8 off the consent agenda at this time?

9 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
10 approval of the consent agenda.

11 BOARD MEMBER PEACE: Second.

12 CHAIRPERSON BROWN: It's been moved by Member
13 Mulé and seconded by Member Peace.

14 Kristen, can you call the roll?

15 EXECUTIVE ASSISTANT GARNER: Danzinger?

16 BOARD MEMBER DANZINGER: Aye.

17 EXECUTIVE ASSISTANT GARNER: Mulé?

18 BOARD MEMBER MULÉ: Aye.

19 EXECUTIVE ASSISTANT GARNER: Peace?

20 BOARD MEMBER PEACE: Aye.

21 EXECUTIVE ASSISTANT GARNER: Wiggins?

22 COMMITTEE MEMBER WIGGINS: Aye.

23 EXECUTIVE ASSISTANT GARNER: Brown?

24 CHAIRPERSON BROWN: Aye.

25 Thank you.

1 Now I will note Items 6 and 12 were heard in
2 Committee only.

3 Items 15, 16, and 19 were pulled.

4 We will hear 13, 24, and 25 by the full Board.

5 And we'll next take up the fiscal consent
6 calendar, Items 21 and 23.

7 I will move first to the Sustainability
8 Committee. And Chair Petersen is not here, but I do want
9 to at least take the opportunity to thank Lorraine and
10 your group, Trevor, Steve Uselton for doing a phenomenal
11 job on the women's conference and really showcasing what a
12 fabulous job we can do in waste diversion and creating the
13 zero waste. I know Gary did that at the Committee, but
14 wanted to at least echo my thanks to all of you for all of
15 your hard, hard work and months of planning to do that.

16 And we will next move to Committee Chair Mulé.
17 Do you have any report?

18 BOARD MEMBER MULÉ: Just very briefly. Thank
19 you, Madam Chair.

20 As you had indicated, Items 16 and 19 were
21 pulled, and 15 is actually -- I guess technically we
22 restarted the clock on that permit application. We did
23 hear a few items.

24 We did have a presentation on closed, illegal,
25 and abandoned sites, that program that we operate. Very

1 good presentation.

2 Also we did hear the consideration of a proposed
3 permit for Solano County Compost Facility, which was just
4 approved on our consent agenda. And we will be hearing
5 Item 13, which is Consideration of the Adoption of the
6 Proposed Permit Implementation Regulations.

7 And that concludes my report. Thank you.

8 CHAIRPERSON BROWN: Thank you very much.

9 Now we move to Special Waste. Mr. Lee, we have
10 fiscal consent Item Number 21.

11 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

12 And good morning, Board members. For the record, I'm Jim
13 Lee, Deputy Director for the Special Waste Division.

14 Board Item 21 is Consideration of Allocation of
15 Additional Appropriation for Specific Tire Grant Programs.
16 This item is to request the Board's approval of an
17 allocation of funds received through fiscal year 2006-07
18 budget change proposal. The BCP allocated \$5,000,000 for
19 Local Assistance Grants to augment the RAC and/or the
20 tire-derived aggregate programs. As discussed and
21 concurred with by the Special Waste Committee, staff
22 proposes that the allocation be split, \$4 million for the
23 Targeted RAC Incentive Grant Program and \$1 million for
24 Continuation of the RAC Use Grant Program.

25 With that, staff requests that the Board approve

1 Resolution 2006-189.

2 CHAIRPERSON BROWN: Thank you.

3 Do we have any questions from any Board members?

4 BOARD MEMBER MULÉ: Madam Chair, I'd like to move

5 Resolution 2006-189.

6 BOARD MEMBER PEACE: Second.

7 CHAIRPERSON BROWN: Thank you.

8 It's been moved by Member Mulé and seconded by

9 Member Peace.

10 Kristen, can you call the roll on Item 21?

11 EXECUTIVE ASSISTANT GARNER: Danzinger?

12 BOARD MEMBER DANZINGER: Aye.

13 EXECUTIVE ASSISTANT GARNER: Mulé?

14 BOARD MEMBER MULÉ: Aye.

15 EXECUTIVE ASSISTANT GARNER: Peace?

16 BOARD MEMBER PEACE: Aye.

17 EXECUTIVE ASSISTANT GARNER: Wiggins?

18 COMMITTEE MEMBER WIGGINS: Aye.

19 EXECUTIVE ASSISTANT GARNER: Brown?

20 CHAIRPERSON BROWN: Aye.

21 Thank you. Now we'll move to spending that

22 money.

23 DEPUTY DIRECTOR LEE: Yes, ma'am.

24 Madam Chair, Board Item 23 is Consideration of

25 Grant Awards for the Targeted Rubberized Asphalt Concrete

1 Incentive Grant Program.

2 This item has been revised a second time to show
3 the Special Waste Committee's approval of the staff
4 proposed allocation for this program of \$4 million. This
5 item was heard by the Special Waste Committee and
6 recommended for fiscal consent. Staff requests that the
7 Board approve the award of \$175,000 to the State Route 4
8 Bypass Authority and approve Resolution 2006-191 as
9 revised.

10 CHAIRPERSON BROWN: Thank you, Jim.

11 Do we have any questions?

12 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
13 Resolution 2006-191, Revision 2.

14 BOARD MEMBER PEACE: Second.

15 CHAIRPERSON BROWN: It's been moved by Member
16 Mulé and seconded by Member Peace.

17 Kristen, can you call the roll?

18 EXECUTIVE ASSISTANT GARNER: Danzinger?

19 BOARD MEMBER DANZINGER: Aye.

20 EXECUTIVE ASSISTANT GARNER: Mulé?

21 BOARD MEMBER MULÉ: Aye.

22 EXECUTIVE ASSISTANT GARNER: Peace?

23 BOARD MEMBER PEACE: Aye.

24 EXECUTIVE ASSISTANT GARNER: Wiggins?

25 COMMITTEE MEMBER WIGGINS: Aye.

1 EXECUTIVE ASSISTANT GARNER: Brown?

2 CHAIRPERSON BROWN: Aye.

3 Thank you very much, Jim.

4 Now we will move to Board Agenda Item 13.

5 Consideration of the Adoption of the Proposed Permit

6 Implementation Regulations -- I'm stalling for you,

7 Howard -- or Request for Direction and Notice to Proposed

8 Regulations for Second 15-Day Comment Period.

9 DEPUTY DIRECTOR LEVENSON: Thank you, Madam

10 Chair.

11 And while staff is coming up to assist on this
12 item, which I will introduce and then turn to Mark de Bie,
13 I do want to take a moment to thank Mindy for all of her
14 great, great service to the P&E division. I think, you
15 know, we all admire her greatly. Sharon Anderson, her
16 boss, you know, like all of us loves her dearly and are
17 really going to miss her.

18 I think perhaps more importantly two things. One
19 is the LEA world is really going to miss her. She's done
20 a fantastic job in terms of all the training and
21 communication that goes on between us and LEAs. And you
22 know, hopefully we can find somebody who comes close to
23 that standard.

24 But I think while it's our loss and the LEA
25 world's loss, the Board is really getting a great asset

1 here in the Office of Environmental Education. I think
2 you're going to be just amazed at the kinds of things --
3 I'm putting you on the spot now -- you'll be amazed at
4 what Mindy will be able to do. And I think she's a great
5 addition to the Board's Executive team. So
6 congratulations, Mindy. And I'm sorry you're going.

7 SUPERVISOR FOX: Thank you, Howard.

8 DEPUTY DIRECTOR LEVENSON: I was going to say
9 that whether I was stalling or not.

10 CHAIRPERSON BROWN: Of course you were.

11 DEPUTY DIRECTOR LEVENSON: Okay. So we're on
12 Item 13. I'd like to briefly introduce this item. And
13 with me to my left is Mark de Bie and Bobbie Garcia,
14 two-thirds of the team that worked on this. I think Becky
15 Williams is out there in the audience somewhere. So these
16 three have done a fantastic job for the last two years I
17 think on this rulemaking package. And we've gone through
18 a lot of public workshops, informal processes that we've
19 heard over and over again that have been very well
20 received by all the stakeholders.

21 This is a very important rulemaking. It covers a
22 number of major concepts that we'll go over in a little
23 bit more detail after my introduction. But this includes
24 significant change in the design and operation of a solid
25 waste facility that's not authorized by the existing

1 permit. This is a subject that has been on the table.
2 For 20 years, people have been trying to deal with this.
3 And we finally are at a point where we can make a decision
4 about how to approach this.

5 Part of that is a decision tree methodology for
6 LEAs to follow in determining how to accommodate proposed
7 changes, and the proposed regulations also include
8 associated with that decision tree a significant change
9 list and a minor change list.

10 Third area that the regs cover that's very
11 important for the permitting process and especially the
12 environmental justice concerns that Mark mentioned as part
13 of his Executive Director's report are the public noticing
14 and hearing requirements for both new and revised permits
15 and noticing requirements so that the public is aware of
16 proposed changes that would only constitute a report of
17 facility amendment, not a revision. And then lastly is a
18 relationship between local land use entitlements and the
19 facility permit.

20 In September, the Committee directed us to make
21 some changes to the proposed regs and to send those
22 regulations out for a 15-day comment period which ended on
23 September 26th. Mark and Bobbie will go over some of the
24 comments that we received. But the changes at that point
25 from the Committee were to include the minor change list,

1 include the significant change list, and then to initiate
2 that 15-day comment period. Those were the primary
3 changes that went out for the 15-day comment period.

4 We are now seeking your direction or approval in
5 particular to adopt the regulations as proposed. And
6 we'll go through the changes that have been incorporated
7 and status of those regulations today. If you choose not
8 to adopt them today, then we would be seeking your
9 direction on what other changes to make that might require
10 a 15-day comment period. But our recommendation at this
11 point is to go forth and adopt the regulations.

12 So I think with that, I will turn it over to
13 Mark. We think for the record and because of the
14 importance of this rulemaking package that we would go
15 through the primary issues and kind of the basic approach,
16 not necessarily every last dotted i and t. But so you
17 have for the record you have an explanation of what the
18 regulations entail.

19 BRANCH MANAGER DE BIE: Thank you, Howard. Mark
20 de Bie with Permitting Inspection Branch. As Howard
21 indicated, this is a team effort. And I would also like
22 to thank Bobbie and Becky and Michael Bledsoe, as well as
23 Board Member Mulé for her participation in a lot of the
24 up-front informal process.

25 Howard indicated this was around a two-year

1 process. Much of that was just informal discussions
2 trying to scope the regulations, the formal processes, you
3 know, much less than that. But there was a lot of time
4 spent up front trying to get it right the first time, and
5 I think we're there.

6 So per the direction of the Permitting and
7 Enforcement Committee, Board staff has completed an
8 initial 60-day comment period and then a follow-up 15-day
9 comment period. Based on the comments received, Board
10 staff have made adjustments to the regs. This last round
11 we received 28 comments and have incorporated changes
12 based on those. None of the changes that we have included
13 this last round are substantial or substantive that would
14 require in staff's opinion additional comment period at
15 this time. And that's why we're moving forward to you,
16 the Board, to request that you approve it and move it on
17 to the next part of the process.

18 Just to let you know what the last few issues
19 were that were being discussed during the last comment
20 period, they dealt with the minor change list, noticing
21 and the public hearing or meeting requirements, as well as
22 some discussion about the relationship between the solid
23 waste facility permit application process and local land
24 use approvals.

25 Staff completed their review of the comments and

1 again made changes. The regs as they currently are
2 proposed are in Attachment 2 of the agenda package, and
3 that would be the version of the regs that we would
4 forward on if the Board approves them today. Attachment 1
5 is a table that has a summary of the last set of comments
6 that were received during the last comment period and then
7 staff's response or initial draft response to those or our
8 approach to those.

9 At the Board's pleasure, I'd like to go through
10 just a summary of what these regs will accomplish.
11 Certainly, staff is available to if necessary go page by
12 page through it so we're clear on what the specifics are.

13 But basically, as Howard indicated, the regs do
14 include a definition of significant change in design and
15 operation of a solid waste facility that's not authorized
16 by the existing permit which was a requirement out of
17 1497. That was part of the reason we started this
18 regulation process. And that definition is basically an
19 indication of when a permit would need to go through a
20 revision process. So the regs do include a definition.

21 Along with that definition, though, we've
22 included a methodology for determining when a change
23 that's being requested by an operator should go through a
24 revision process. That's commonly referred to as the
25 decision tree. It's a set of questions that the LEA would

1 need to respond to and answer. And depending on the
2 responses to those questions, determine whether or not the
3 request could be approved through a revision or a modified
4 permit process or an amendment to the operating document
5 referred to as the report of facility information, or RFI.

6 Along with the decision tree, there's also two
7 sets of lists that have been incorporated into the
8 regulations. One is a significant change list. If a
9 change being requested by an operator appears on that
10 list, then the LEA will be obligated to require a permit
11 revision in order to approve that particular change. The
12 list for significant change includes four items dealing
13 with increasing permitted tonnage, increasing permitted
14 acreage, increasing permitted hours, and then for
15 landfills, increasing the permitted height of the landfill
16 per final grade.

17 So again, if an operator is requesting a change
18 that includes any of those elements, it would always be a
19 revision to the permit.

20 Please keep in mind with the decision tree other
21 kinds of changes could require revisions depending on the
22 outcome of the decision tree.

23 Embedded in that decision tree is this modified
24 permit process which is a more streamlined process
25 designed to handle permit changes that are not determined

1 significant, do not require a revision, but still require
2 some change to the actual permit that the LEA is issuing.

3 That is a streamlined process. There's less --
4 fewer tasks that the LEAs need to accomplish locally. For
5 example, they would not be required to hold a 1497 hearing
6 for a modified permit. And when it comes to the Board,
7 the Executive Director would be able to take action on the
8 modified permit.

9 Again, also included in the regs is a list that's
10 being referred to as minor change. These are items that
11 would not require any LEA review or approval prior to them
12 being implemented by the operator. The operator would in
13 effect look at their own short decision tree or a set of
14 questions, criteria that they would need to evaluate and
15 then also identify whether the change they're requesting
16 is on the list. And if they meet all the criteria and are
17 on the list, then it would be a clear sign to the operator
18 they could implement that particular change. They would
19 notice the LEA that they were doing that. The LEA could
20 based on the information provided in the notice and their
21 own observations indicate that they disagree with the
22 operator's determination and require the operator to
23 modify their approach in dealing with that particular
24 change.

25 The list that's included in the regs is not

1 inclusive of all potential minor changes. There is again
2 a set of criteria. If the minor change is found to match
3 or go -- is found through using the criteria to be minor,
4 then that change could also go through this streamlined
5 process.

6 Bobbie is indicating that we've tightened up with
7 the regs through this process that the EA would need to
8 provide the operator in writing a finding that indicates
9 why they feel that the operator made the wrong decision
10 relative to a minor change. And that would allow the
11 operator to then take that information and, you know,
12 either argue back or, you know, agree and then move
13 forward in a different direction.

14 The regs establish increased noticing
15 requirements. For the first time, we'll have additional
16 noticing for RFI amendments. It includes noticing and
17 informational -- or noticing requirements for modified and
18 revised and new permits and informational meeting
19 requirements for new permits and revised permits.

20 We're adding a new requirement of operators. And
21 when they provide information to the LEA, they are going
22 to now be required to include information about any public
23 notices or public meetings that they're aware of and add
24 that to the application package so the LEA is aware and
25 also Board staff is aware and the Board therefore aware of

1 other opportunities the public may have had to become
2 aware of the changes that are being proposed to the LEA
3 through this permit process.

4 We are in these regs shifting the responsibility
5 for noticing operators of their requirement to apply for a
6 five-year review for registration and standardized
7 permits. Currently, the Board staff notifies the
8 operators of these requirements. The LEAs notice
9 operators of the requirement for full permit. So these
10 regs will give the responsibility to the LEA for all
11 five-year review noticing requirements.

12 The regs also require the LEAs to design an
13 inspection program that includes inspections that are
14 unannounced and conducted in a random schedule so that
15 there's less chance that an operator will know that an LEA
16 is coming to inspect.

17 It does include some flexibility in those
18 situations where an LEA cannot show up at the gate and
19 inspect. For example, there are some solid waste
20 facilities at military bases. So the LEA would need to
21 give some notice in that case. So it allows that some
22 flexibility to allow that to occur.

23 And then finally, the regs attempt to and I think
24 do clarify the relationship between a solid waste facility
25 permit application process and the local land use

1 approvals. Basically, the regs do this by indicating that
2 the responsibility for ensuring there's some consistency
3 and compatibility between a local land use approval and
4 the solid waste facility permit should be done when the
5 LEA sits down and writes the permit. And then so the regs
6 indicate that the LEA should have the information in front
7 of them to allow them to write a permit that is consistent
8 and certainly not in conflict with any other permits that
9 may exist, not just the local land use, but also any
10 permits from the Air Board or Water Board.

11 The regulations also remove the requirement that
12 the operator include in their application the local land
13 use approval document. The regs do continue to allow the
14 LEA to request additional information as part of the
15 application. And so the LEA does in effect have the
16 authority to request the land use document. But through
17 our work with the LEAs and others, the LEA has full access
18 to the document anyway, and they wouldn't necessarily be
19 dependant on the operator to provide them that
20 information.

21 To increase the communication between the solid
22 waste facility permit process and the land use
23 authorities, the regs do require that the applicant at the
24 time of providing the application to the LEA that they
25 provide a copy of the application form to the local land

1 use authority. It's expected that if the authority is
2 getting information about changes or proposed changes to
3 the LEA, then they would be able to use that information
4 to make a determination on whether or not there is a need
5 to address any local land use issues associated with that
6 request.

7 The last aspect of that, at one time the regs did
8 propose a different approach to address the same issue,
9 and part of that was to change the definition on correct.
10 And based on comments during from the 60-day comment
11 period, staff chose a different direction, and that was
12 submitted during the 15-day comment period. So those
13 changes that were previously proposed to the definition of
14 correct were backed out, and it's back to what it was and
15 is currently.

16 I'll need to step back to the significant change
17 issue, too. And I you think this is important to
18 highlight. So forgive me. One of the last set of
19 comments that we got was some confusion about how this
20 definition should be used, and a lot of commentors or a
21 number of commentors were not clear on the relationship
22 between the definition of significant change and similar
23 language in the CEQA process. CEQA uses the term
24 significant and substantial and that sort of thing.

25 So we had proposed to indicate in that definition

1 that this definition was to be used only for determining
2 when a revision to a permit is required. And in doing so,
3 we also said and don't try to use this definition to make
4 CEQA determination. Well, that caused even more confusion
5 because we included CEQA in the definition. So we backed
6 out the reference to CEQA, and we basically say the only
7 purpose for this definition is determine when a permit
8 needs to be revised, and we stop there.

9 Again, if you would like us to step through the
10 regs, we can do that. But basically, staff at this time
11 is asking the Board to go ahead and approve the
12 regulations by adopting Resolution Number 2006-183. And
13 if the Board does approve the Resolutions, staff will
14 complete the rulemaking file and then submit the
15 rulemaking file and the record to the Office of
16 Administrative Law for their review.

17 CHAIRPERSON BROWN: Thank you, Mark.

18 Does anybody have any questions? We do have two
19 speakers. So Cheryl, do you have any questions?

20 BOARD MEMBER PEACE: Do the speakers first.

21 CHAIRPERSON BROWN: I was going to go to
22 questions first, but if you want to wait until after the
23 speakers, I can do that.

24 Our first speaker is George Larson.

25 MR. LARSON: Thank you, Madam Chair, Members.

1 George Larson on behalf of Waste Management, Inc.

2 I want to pick up on a comment that Howard
3 Levenson indicated. This has been an issue discussed for
4 many years, if not many decades. And in fact, back in the
5 archives of the history of this Board, I was the staff
6 person working on the significant change effort in the
7 early '80s. I commend the staff for having produced the
8 product they have because we failed to come up with a
9 definition. I don't know exactly how long ago it was, but
10 my hair was black.

11 This has been a long and open process, and we
12 appreciate that. And we commend staff for the openness
13 that they've afforded the interested parties. They were
14 very responsive. While there's no perfect solution,
15 certainly this is as close I think as we can get as words
16 on paper.

17 We support the minor list being retained,
18 especially with provision to include the list and the
19 words "included but not limited to," to give necessary
20 flexibility to the local enforcement agency to make a
21 determination if other issues are insignificant.

22 We support the decision tree, because we think it
23 provides the framework for evaluating changes that may
24 have occurred. And I won't belabor it further. We
25 commend the whole effort. We support staff's

1 recommendation to move forward and submit it to AOL.

2 Thank you.

3 CHAIRPERSON BROWN: Thank you, George.

4 Any questions of the speaker?

5 Our next speaker is Evan Edgar, CRRC.

6 MR. EDGAR: Chair and Board member, my name is
7 Evan Edgar for the California Refuse Removal Council. I'm
8 here on behalf of George Eowan as well, because George and
9 George were there 20 years ago. I was only there 15.

10 So we support staff's recommendation for this
11 package today because it does add a lot of certainty and
12 clarity. For the last 15 years, we had a lot of cases
13 where we don't have that level of certainty on a minor
14 change list, and we have a lot of clarity on a decision
15 tree. So it has a lot of good features on a big picture
16 and small stuff. So it has something for everybody.

17 And I think that was a good open process for the
18 last couple years that George Eowan was on for CRRC and
19 George Larson. We support staff's recommendation today.
20 Thank you.

21 CHAIRPERSON BROWN: Thank you very much.

22 Any questions of this speaker?

23 Thank you, Evan.

24 Member Peace.

25 BOARD MEMBER PEACE: I guess I just have a few

1 things to say, and you can say I'm going into another one
2 of Board Member Peace's tirades.

3 But as Mark de Bie stated, staff got direction
4 from the Committee to leave in the minor change list. But
5 as stated in page 13-5 and 6, Board staff originally
6 recommended deleting the minor change list. And like
7 Howard stated, this has been -- this has been a long time
8 in the making, and this is an important rulemaking
9 package.

10 This item was not on consent today, because I was
11 the dissenting vote in the Committee. You know, we often
12 have differences of opinion and we can respectfully
13 disagree. I proposed deleting the minor change list, a
14 list of 22 changes with the added phrase added by
15 industry, "including but not limited to," change an
16 operator can make without prior LEA review and approval
17 and only notifying the LEA of that change within 30 days.

18 Now, I understand industry's point of view, and
19 they're always here to tell us their point of view of
20 wanting to make minor changes without the hassle of
21 getting LEA approval first. But with all due respect,
22 this is wrong.

23 But let's take a step back to 2003 when AB 1497
24 was passed by the Legislature and signed by the Governor.
25 AB 1497 required the Board to define significant change.

1 The changes that would require a permit revision and
2 therefore a public hearing so that neighbors of a waste
3 facility could know what was happening in their
4 neighborhood and have a chance to comment. The LEA would
5 have a chance to condition a permit based on those
6 comments and concerns.

7 Nowhere in AB 1497 did it ask the Board to define
8 insignificant or minor changes an operator could make
9 without prior approval of the LEA. This bill did not
10 intend to lower the oversight or the public scrutiny.

11 I was at the workshop in 2004 when industry
12 suggested coming up with a list of minor changes. This
13 was not what staff thought was a good idea. This was not
14 what the LEAs thought was a good idea, and not what the
15 legislation required the Board to do.

16 Like I said, I can understand why industry wants
17 a minor change list. And in most instances, the LEA would
18 probably agree with their assessment of a minor change.
19 With the decision tree, they have that option. But to say
20 the LEA would agree in all instances for any facility
21 under any circumstance is absurd and flies in the face of
22 the plain meaning of the statute.

23 What may be a minor change at one facility may
24 not necessarily hold true for another. Let's take an
25 example of something on the minor change list. Number 16,

1 changes to traffic patterns on site that do not effect
2 off-site traffic. Sounds innocuous enough, right, and
3 probably under most circumstances it would be. But we
4 have all been to landfills. They are a bustling place.
5 Trucks going this way for green waste, that way for C&D,
6 this way for the big franchise haulers going to the face
7 of the landfill. And you have the little haulers over
8 here, the little people coming in with their little
9 truckloads loaded down with stuff from a morning yard
10 cleanup.

11 Heaven forbid, but what if there was a traffic
12 accident on site, a bad accident. And because it was
13 within a 30-day time frame of having to let the LEA know
14 of the change, the LEA didn't know the traffic pattern had
15 been changed. Who would be looked at for allowing this
16 unsafe condition to exist? Not the LEA. Well, they
17 didn't even know about the change yet. Who would be the
18 press or the Legislature or the public point their fingers
19 at?

20 After all, it was the Board who passed
21 regulations that took control of those changes such as
22 this out of the hands of the LEA. The Board has oversight
23 of a permitted facility through the LEA. When the Board
24 passes regulations that bypass the LEA, we become
25 responsible.

1 We don't even know at this point what the future
2 consequences could be of a minor change list, which I
3 think is why staff recommended that we take out the minor
4 change list. Our staff with stakeholder input and many
5 workshops -- like everybody said these particular
6 workshops for a couple of years and the idea of
7 significant change for years -- you know, more years than
8 that. But in many workshops, they came up with a very
9 good decision tree proposal for helping the LEA decide
10 when a change was significant enough to require a revision
11 or whether it was minor enough to require only an RFI
12 amendment or a modified permit. This is what staff
13 originally proposed, and this is what was preferred by the
14 LEAs. Not the minor change list. That is not what they
15 recommended, but what they could live with considering
16 opposition by industry and industry's influence over this
17 Board.

18 Consensus among stakeholders does not relieve us
19 of our responsibility to safeguard the people of the state
20 of California. We are not here to appease industry. The
21 Legislature directed us to do something good for the
22 public interest, and we allowed industry to turn it upside
23 down. We should not be reducing the authority of the LEA.
24 Adopting the minor change list proposal by any objective
25 observation is an appeasement and an unconscionable

1 reversal of fortunate for the operator.

2 The Committee was in agreement with everything in
3 this package, except, you know, me, the dissenting one,
4 page 6 on 13-5 and 6, the minor change list. And I hope
5 everyone had a chance to read it carefully.

6 I guess those are my comments. And when it comes
7 to making a motion, I would like to make an alternative
8 motion.

9 CHAIRPERSON BROWN: Does anybody have any other
10 questions or comments?

11 Having heard none, I will entertain a motion.

12 BOARD MEMBER PEACE: I would like to make a
13 motion for Option 2, direct staff to delete the minor
14 change list as they had originally proposed and notice a
15 change for a second day comment period. This would allow
16 the LEA to implement the decision tree concept as again
17 originally proposed by our staff.

18 CHAIRPERSON BROWN: I have a motion on the floor.
19 Is there another motion or a second for the motion that's
20 on the floor?

21 There is no second for this motion.

22 Is there another motion?

23 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
24 Resolution 2006-183.

25 CHAIRPERSON BROWN: Can I have a second for this

1 motion?

2 BOARD MEMBER DANZINGER: Second.

3 CHAIRPERSON BROWN: It's been moved by Member
4 Mulé and seconded by Member Danzinger.

5 Kristen, call the roll for the motion on the
6 floor?

7 EXECUTIVE ASSISTANT GARNER: Danzinger?

8 BOARD MEMBER DANZINGER: Aye.

9 EXECUTIVE ASSISTANT GARNER: Mulé?

10 BOARD MEMBER MULÉ: Aye.

11 EXECUTIVE ASSISTANT GARNER: Peace?

12 BOARD MEMBER PEACE: No.

13 EXECUTIVE ASSISTANT GARNER: Wiggins?

14 COMMITTEE MEMBER WIGGINS: Aye.

15 EXECUTIVE ASSISTANT GARNER: Brown?

16 CHAIRPERSON BROWN: Aye.

17 The motion passes. Thank you.

18 And we will now move to Item 24, which is
19 Consideration of Allocation and Scope of Work for the
20 Curriculum Field and Pilot Testors for the Development of
21 the Education and the Environment Model Curriculum.

22 Mindy, welcome.

23 SUPERVISOR FOX: Good morning.

24 CHAIRPERSON BROWN: You're on the hot seat. I
25 know, we announce you, and now you have a presentation. I

1 hope you had time to prepare.

2 SUPERVISOR FOX: That was the first call from
3 Mark just yesterday. Okay.

4 Good morning. And before I introduce the item, I
5 do have to thank Mark, the Chair, Howard, others for your
6 very kind words and your words of support. I really
7 appreciate it. I'm not going very far, only moving up
8 three floors. And I will miss the whole LEA world, but
9 I'll be around. And I'm really excited to start this new
10 challenge.

11 And with that, I'm very happy to introduce this
12 item, Number 24. It is titled, Consideration of
13 Allocation and Scope of Work for Curriculum Field and
14 Pilot Testors for the Development of the Education and the
15 Environment Model Curriculum. And Theresa Bober of the
16 Office of Environmental Ed will present the item.

17 MS. BOBER: Thank you, Mindy. For the record, I
18 am Theresa Bober, and I am here today to present Item 24
19 for your approval.

20 The development of the model curriculum is
21 underway. In May 2006, the Board approved a contract with
22 the National Geographic Society to develop environmental
23 education materials such as templates, maps, and images
24 for the model curriculum.

25 In August 2006, the Board approved the scope of

1 works for professional curriculum reviewers, editors, and
2 graphic designers.

3 Last month, the Office of Education and the
4 Environmental held a week-long writers workshop aimed at
5 producing environmental education curriculum for 4th
6 through 6th grade students in science and social science.
7 We will be holding our next writers workshop in November,
8 and that will be geared for writers who will be producing
9 lesson plans for kindergarten through 3rd graders. We
10 will be holding workshops for 9th through 12th and 7th
11 through 8th grade writers in the coming months.

12 Once the model curriculum has been drafted, K
13 through 12th grade teachers will be needed to field and
14 pilot test the lessons and units in their classrooms and
15 then provide us with the necessary feedback to determine
16 the effectiveness of the materials.

17 After reviewing the results of these field and
18 pilot tests, the grade level curriculum packages will be
19 revised and improved prior to their inclusion into the
20 final EEI curriculum. The EEI curriculum will then be
21 submitted to the Curriculum and Supplemental Development
22 Commission, the Secretaries of both Cal/EPA and the
23 Resource Agencies, and finally to the State Board of
24 Education for review and approval.

25 We are seeking 20 school districts in California

1 to participate in the field and pilot testing phase of our
2 model curriculum development. The requested funding
3 allocation will provide each district with funds to field
4 test 44 individual units -- and by the way, a unit has six
5 to eight lessons in them, for reference -- and to pilot
6 test 19 unit packages. And each package has six to eight
7 units. It's a little confusing.

8 The school districts will assign a district level
9 coordinator to administer the field and pilot testing and
10 assure that the teachers report their finding within one
11 week of the completion of their assigned units and grade
12 level curriculum packages.

13 Therefore, staff recommends Option A, approval of
14 the allocation and scope of work for curriculum field and
15 pilot testers for the development of the education and
16 environment model curriculum and adoption of Resolution
17 Number 2006-180.

18 This concludes my presentation. If you have any
19 questions regarding this item, I would be happy to try to
20 answer them.

21 CHAIRPERSON PETERSEN: Thank you.

22 Any questions from Board members? Member Peace.

23 BOARD MEMBER PEACE: I was going to say when
24 you're looking at teachers to test the program, are you
25 looking for like there will be one teacher in each grade

1 level in each district? Or how do you see that?

2 MS. BOBER: What we're doing is looking at 20
3 districts, and each district will be asked to field test
4 44 units. So how they come up -- whether they have one
5 teacher testing all 44, which is unlikely, or if they have
6 ten or five, it doesn't matter, as long as they test the
7 44 units.

8 BOARD MEMBER PEACE: And is this money just for
9 materials or any of the money being used to go to the
10 district?

11 MS. BOBER: None of it is for materials. It is
12 all to go to the school district, and the districts get to
13 choose how they are going to use the money.

14 So we really couldn't pay the teachers directly
15 because of union issues. We don't know the union issues
16 for each of those districts. So we give the money to the
17 districts and say you have \$47,500 to test these -- the
18 deliverable is you test the 44 units and give us the
19 feedback. And also not only field test them, but also
20 pilot test the packages. So after they're field tested,
21 we get feedback. Then we go tweak it and we make it
22 better. And then they pilot test the units -- I mean the
23 packages. And then they give it back to us and we give
24 them money.

25 BOARD MEMBER PEACE: This is really exciting.

1 Thank you.

2 MS. BOBER: It is very exciting.

3 CHAIRPERSON BROWN: Thank you.

4 Do we have any other questions? Thank you,

5 Theresa.

6 Could I have a motion on this item?

7 BOARD MEMBER MULÉ: Madam Chair, I'll move

8 Resolution 2006-180.

9 BOARD MEMBER PEACE: Second.

10 CHAIRPERSON BROWN: It's been moved by Member

11 Mulé and seconded by Member Peace.

12 Can you call the roll, Kristen?

13 EXECUTIVE ASSISTANT GARNER: Danzinger?

14 BOARD MEMBER DANZINGER: Aye.

15 EXECUTIVE ASSISTANT GARNER: Mulé?

16 BOARD MEMBER MULÉ: Aye.

17 EXECUTIVE ASSISTANT GARNER: Peace?

18 BOARD MEMBER PEACE: Aye.

19 EXECUTIVE ASSISTANT GARNER: Wiggins?

20 COMMITTEE MEMBER WIGGINS: Aye.

21 EXECUTIVE ASSISTANT GARNER: Brown?

22 CHAIRPERSON BROWN: Aye.

23 Thank you all very, very much. Andrea, thank you

24 for all your hard work. I think you missed some of the

25 early kudos for Mindy, but we're thrilled to welcome Mindy

1 on board. And thank you all for doing such a great job.

2 Now we will move to Agenda Item 25, Consideration
3 of the Adoption of the Board Governance Policies for
4 Governance Process and Board Staff Linkage. And do you
5 want to introduce first and then I'll --

6 EXECUTIVE DIRECTOR LEARY: Very briefly, Madam
7 Chair.

8 As the Board knows and has participated in this
9 fully, I'm not sure we've had an agenda item that involves
10 so much Board participation in its preparation prior to
11 bringing it before the Board.

12 This is a process that was developed in public
13 with public participation to some extent, certainly with
14 much participation from Exec staff, a widely embraced
15 process. I think all I can offer you, Madam Chair, is
16 congratulations on getting to this point. I think you
17 have a good product to endorse here today.

18 And I'll just get out of the way and see if there
19 are any questions on any of the details that we can
20 answer. And I encourage you and endorse -- is there
21 options on this one? Endorse Option 1, adopt the
22 governance process.

23 CHAIRPERSON BROWN: I don't think there's any
24 options on this. And seeing that it's come through the
25 Board process, there's probably not a staff

1 recommendation, but I'd be curious as to see what that
2 was.

3 BOARD MEMBER DANZINGER: I'm not.

4 CHAIRPERSON BROWN: For the audience who maybe is
5 not familiar with where we are, we decided as a Board at a
6 retreat back in February and May actually to embark on a
7 process of developing policies to move ourselves to a
8 policy-making Board and procedures what that would
9 actually look like.

10 And over the past five months roughly, we have
11 participated as a group in developing these policies.
12 Many of them follow governance structure that the Board
13 has been operating under for quite some time so it
14 shouldn't be too far. But it really defines the role of
15 the Board, Board members individually, the Board as a
16 whole, and how we develop policies.

17 And this is the first two of three parts. The
18 third part is in progress, which are measurable goals and
19 strategic directives for staff to help benchmark how
20 program performances are going. But this gets us quite a
21 ways to a policy-making Board setting the benchmark and
22 letting staff do what they do best which is implement
23 programs and achieve the great successes that we are known
24 for.

25 Anyway, I will turn it over at this point to any

1 questions or comments to Board members and audience if we
2 have any.

3 Member Mulé.

4 BOARD MEMBER MULÉ: Thank you, Madam Chair.

5 First of all, I want to thank you for your leadership in
6 getting us to where we're at. I've been on this Board now
7 nearly two and a half years and recognize from almost the
8 beginning the need to do something to get us to the point
9 where we're at.

10 And so as Mark and staff and Cheryl well know, we
11 struggled through a number of processes, but I think this
12 one really captured the essence of what we're trying to
13 get to in terms of getting this organization focused and
14 clearly defining the roles of the Board members as well as
15 the staff and, you know, letting staff do their job on a
16 day to day basis. And so again, I just want to thank you
17 for your leadership.

18 And also I want to thank my fellow Board members
19 for all of their participation in this process. You know,
20 sometimes just we all spend a lot of time on this process.
21 I know that there are some Board members that to sit for
22 more than two hours at one sitting was a struggle, but we
23 managed not only to do that, but to put forth a great
24 product.

25 And again I want to thank Mark and Elliot and

1 Julie for your participation as well in putting this all
2 together.

3 I do just have one question on the delegation
4 item. So I know that Elliot was going to go through that.
5 I just think just so that everyone in the audience
6 understands it, we've already delegated a number of items
7 to the Executive Director. So I just want to make sure
8 that everyone has that understanding that we're not, you
9 know, doing anything that hasn't -- we've embarked on this
10 process, and we just decided as a Board, as a BOD as we're
11 calling ourselves, a Board of Directors, to clarify and
12 add a few more items to that delegation list.

13 So if you could respond to that, Elliot, I'd
14 appreciate it. And with that, thank you again.

15 STAFF COUNSEL BLOCK: Sure. Just very briefly.
16 As you mentioned, most of these items actually have been
17 delegated by the Board to the Executive Director. There
18 was a large list in 1995, but there have been a number of
19 things individually granted since then.

20 So what this list -- policies BL6 through 10
21 starting on page 29 of the attachment really just
22 reorganizes -- for the most part reorganizes those,
23 rephrases those, makes them easier to find than they'd
24 been before. And then does adjust a few items that were
25 not previously delegated. And I can very quickly on page

1 30, the delegation for issuance of major waste tire
2 facility permits where there's no controversy.

3 On page 31, both for the recycled content
4 newsprint and for the plastic trash bag recycled content
5 certifications, the issuance and publishing of the
6 non-compliant list and taking steps to conduct audits were
7 added for both of those items.

8 On page 33, the approval of loans under the
9 landfill closure loan program.

10 And then on page 34, looks like seven items under
11 local jurisdiction plan review and approval that are
12 listed there. Those are the additional ones that had not
13 already previously been delegated.

14 CHAIRPERSON BROWN: Thank you, Elliot.

15 Are there any others questions?

16 BOARD MEMBER DANZINGER: I just want to echo what
17 Rosalie said. You covered it beautifully.

18 I wanted to thank first my fellow Board members,
19 even you, Gary, if you're listening. You know, I mean,
20 governance process -- I mean, it could have been a very
21 mundane process. The thing that struck me regardless of
22 what the outcome is going to be or what it's going to look
23 like, it was much more dynamic. It was very enjoyable to
24 experience with the Board members. I think it's just the
25 latest example of how effectively we work together and

1 there's a lot of respect, a lot of collegiality regardless
2 of whether there were individual issues that were
3 different viewpoints. And it worked out really good.

4 And then I do want to thank the Chair also. I
5 don't think -- this could not have happened without you,
6 simply put. And it's clearly one of the many distinctive
7 skill sets you bring not only to the Board but the Chair's
8 position. I have no head for this kind of stuff. I'm
9 happy to weigh in and throw stuff out. But you brought it
10 all together. And I think it did work out very well, and
11 it is a very promising start.

12 CHAIRPERSON BROWN: Thank you very much.

13 I will say I think we each bring unique skills
14 and talents. And I appreciate every one of the Board
15 members that are up here. And I think it's been a great
16 learning process for all of us. But we do each bring
17 different unique talents to this Board. And each one of
18 us is extremely talented in their own right. So I
19 appreciate your comments and Rosalie's.

20 I've learned a lot at this Board, not just about
21 solid waste facility permits, SRREs, HHWEs, all those
22 things. But anyway, I appreciate it.

23 And I think that what struck me the most through
24 this whole process is everybody has the same goal, and
25 that is to protect the public health and safety of this

1 environment and do the most we can in the jobs that we're
2 at to make a difference, not just for today, but for all
3 time.

4 So anyway, Member Wiggins.

5 COMMITTEE MEMBER WIGGINS: I just want to say
6 ditto to what Jeff and Rosalie said.

7 CHAIRPERSON BROWN: Thank you.

8 Okay. Can we have a motion?

9 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
10 Resolution 2006-178.

11 BOARD MEMBER DANZINGER: Second.

12 CHAIRPERSON BROWN: It's been moved by Member
13 Mulé and seconded by Member Danzinger.

14 Kristen, can you call the roll?

15 EXECUTIVE ASSISTANT GARNER: Danzinger?

16 BOARD MEMBER DANZINGER: Aye.

17 EXECUTIVE ASSISTANT GARNER: Mulé?

18 BOARD MEMBER MULÉ: Aye.

19 EXECUTIVE ASSISTANT GARNER: Peace?

20 BOARD MEMBER PEACE: Aye.

21 EXECUTIVE ASSISTANT GARNER: Wiggins?

22 COMMITTEE MEMBER WIGGINS: Aye.

23 EXECUTIVE ASSISTANT GARNER: Brown?

24 CHAIRPERSON BROWN: Aye.

25 Yea. Thank you.

1 That concludes our regular business, if there is
2 any other thing before we adjourn. The Board will
3 adjourn -- I'm sorry. Member Wiggins.

4 COMMITTEE MEMBER WIGGINS: Just this may be my
5 last Board meeting in the Byron Sher Auditorium. And I
6 just want to recognize Byron Sher as the real hero that he
7 has been. I served with him. He was a Senator and I was
8 in the Assembly. But he got our e-waste in place. And
9 the bill I'm most proud of wasn't my bill, but it was his
10 bill. And he's just a hero. And I just want to recognize
11 him for being the hero he is.

12 BOARD MEMBER DANZINGER: Here, here.

13 CHAIRPERSON BROWN: Here, here.

14 I wasn't even thinking that far ahead, Pat. We
15 are in Riverside being hosted by the City Council next
16 month. Obviously, we wish you the best. This is not a
17 final farewell to Pat, just her opportunity as a Board
18 member to speak.

19 Okay. We are going to move into closed session
20 to take up confidential personnel matters and we will
21 adjourn directly from closed session. So thank you all
22 for joining us today, and see you soon I guess.

23 (Thereupon the California Integrated Waste
24 Management Board recessed into closed
25 session at 11:04 a.m.)

1 (Thereupon the California Integrated Waste
2 Management Board adjourned at 12:00 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 31st day October, 2006.

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